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CORPORATION EMPLOYEES' LONG TERM
DISABILITY BENEFIT PLAN and Real Party in
Interest LIBERTY LIFE ASSURANCE COMPANY
OF BOSTON

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MICHAEL CREMIN,

Plaintiff,

v.

McKESSON CORPORATION
EMPLOYEES' LONG TERM
DISABILITY BENEFIT PLAN,

Defendants.

LIBERTY LIFE ASSURANCE
COMPANY OF BOSTON,

Real Party in Interest

CASE NO. C 07-1302-JL

**DEFENDANT McKESSON
CORPORATION EMPLOYEES' LONG
TERM DISABILITY BENEFIT PLAN'S
ANSWER TO COMPLAINT**

Defendant McKesson Corporation Employees' Long Term Disability Benefit Plan (the "McKesson LTD Plan") in answer to the Complaint of plaintiff Michael Cremin ("Cremin") on file herein, and to each and every cause of action contained therein, admits, denies and alleges as follows:

1. Answering the allegations contained in paragraph 1, McKesson LTD Plan admits

1 that the Plan is subject to and governed by ERISA, 29 U.S.C. section 1132, and this Court has
2 jurisdiction over this matter pursuant to 29 U.S.C. section 1132(f). As to the remaining
3 allegations, McKesson LTD Plan denies each and every allegation contained therein.

4 2. Answering the allegations contained in paragraph 2, McKesson LTD Plan admits
5 that plaintiff was a participant in the McKesson LTD Plan while employed at McKesson.
6 McKesson LTD Plan admits that venue is proper in this judicial district. McKesson LTD Plan
7 further admits that the McKesson LTD Plan is subject to and governed by the Employee
8 Retirement Income Security Act of 1974. As to the remaining allegations, McKesson LTD Plan
9 denies each and every allegation contained therein.

10 3. Answering the allegations contained in paragraph 3, McKesson LTD Plan admits
11 on information and belief that Liberty Life is a corporation. McKesson LTD Plan further admits
12 that Liberty Life became the claims administrator for plaintiff's long-term disability claim under
13 the McKesson LTD Plan, effective January 1, 2000. McKesson LTD Plan further admits that
14 Liberty Life had sole discretion and authority to interpret the McKesson LTD Plan and determine
15 plaintiff's eligibility for benefits under the McKesson LTD Plan. As to the remaining allegations,
16 McKesson LTD Plan denies each and every allegation contained therein.

17 4. Answering the allegations contained in paragraph 4, McKesson LTD Plan denies
18 each and every allegation contained therein.

19 5. Answering the allegations contained in paragraph 5, McKesson LTD Plan denies
20 each and every allegation contained therein.

21 6. Answering the allegations contained in paragraph 6, McKesson LTD Plan admits
22 plaintiff applied for and began receiving long-term disability benefits under the McKesson LTD
23 Plan on or about April 20, 1999.

24 7. Answering the allegations contained in paragraph 7, McKesson LTD Plan admits
25 on information and belief that plaintiff applied for and received Social Security disability benefits
26 beginning on or about August 16, 1999 in the amount of \$1,455.80 per month.

27 8. Answering the allegations contained in paragraph 8, McKesson LTD Plan admits
28 that the Plan Administrator sent a letter to plaintiff dated September 21, 1999 requesting

1 repayment of an overpayment in the amount of \$11,640.00. McKesson LTD Plan further admits
2 that plaintiff sent a check to Preferred Works in the amount of \$11,640. As to the remaining
3 allegations, McKesson LTD Plan denies the allegations contained therein on the basis it is an
4 incomplete and inaccurate summary of the September 21, 1999 letter, which speaks for itself.

5 9. Answering the allegations contained in paragraph 9, McKesson LTD Plan admits
6 on information and belief that Liberty Life sent a letter to plaintiff dated August 30, 2002
7 discontinuing plaintiff's claim for long-term disability benefits under the McKesson LTD Plan.
8 McKesson LTD Plan further admits on information and belief that plaintiff sent a letter dated
9 October 10, 2002 appealing the decision to discontinue his claim for long-term disability income
10 benefits, and Liberty Life sent a letter to plaintiff dated December 6, 2002 upholding its decision
11 to discontinue benefits after the appeal. McKesson LTD Plan further admits that plaintiff filed
12 suit on October 18, 2004 in the United States District Court, Northern District of California, Case
13 No. 04-04394. As to the remaining allegations, McKesson LTD Plan denies the allegations
14 contained therein.

15 10. Answering the allegations contained in paragraph 10, McKesson LTD Plan admits
16 on information and belief the allegations contained therein.

17 11. Answering the allegations contained in paragraph 11, McKesson LTD Plan admits
18 on information and belief that Liberty Life sent a letter to plaintiff dated October 10, 2006, stating
19 that Liberty Life had completed its investigation after remand and had determined that it was
20 unable to alter the original decision to deny benefits beyond August 31, 2002. As to the
21 remaining allegations, McKesson LTD Plan denies the allegations contained therein on the basis
22 it is an incomplete and inaccurate summary of the letter, which speaks for itself.

23 12. Answering the allegations contained in paragraph 12, McKesson LTD Plan admits
24 on information and belief that plaintiff sent a letter to Liberty Life dated December 10, 2006. As
25 to the remaining allegations in paragraph 12, McKesson LTD Plan denies the allegations
26 contained therein on the basis it is an incomplete and inaccurate summary of the letter, which
27 speaks for itself.

28 13. Answering the allegations contained in paragraph 13, McKesson LTD Plan admits

1 on information and belief that Liberty Life sent a letter on January 19, 2007 responding to
2 plaintiff's letter dated December 10, 2006. As to the remaining allegations in paragraph 13,
3 McKesson LTD Plan denies the allegations contained therein on the basis it is an incomplete and
4 inaccurate summary of the letter, which speaks for itself.

5 14. Answering the allegations contained in paragraph 14, McKesson LTD Plan denies
6 each and every allegation contained therein.

7 15. Answering the allegations contained in paragraph 15, McKesson LTD Plan denies
8 each and every allegation contained therein.

9 **FIRST AFFIRMATIVE DEFENSE**

10 **(Failure to State a Claim)**

11 AS A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT
12 ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION CONTAINED
13 THEREIN, this answering defendant alleges that said complaint fails to state facts sufficient to
14 constitute a cause of action against this answering defendant.

15 **SECOND AFFIRMATIVE DEFENSE**

16 **(Conditions Precedent)**

17 AS A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT
18 ON FILE HEREIN AND TO EACH ALLEGED CAUSE OF ACTION CONTAINED
19 THEREIN, this answering defendant alleges that at all times and places mentioned in the
20 complaint herein, plaintiff failed to perform certain conditions precedent to the duty of defendant.
21 These conditions precedent were imposed upon plaintiff by contract. The non-performance of
22 said conditions excused defendant's obligations under the contract and has given the defendant
23 the right of disaffirmance, rescission and release; plaintiff is therefore barred from recovery
24 herein.

25 **THIRD AFFIRMATIVE DEFENSE**

26 **(No Coverage/Barred by Terms and Conditions)**

27 AS A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT
28 ON FILE HEREIN AND TO EACH ALLEGED CAUSE OF ACTION CONTAINED

THEREIN, this answering defendant alleges that the claims alleged against defendant, in whole or in part, do not fall within the scope of the coverage or are barred by the terms, conditions, definitions, exclusions, and the limitations contained in the Plan.

FOURTH AFFIRMATIVE DEFENSE

(Set-Off)

AS A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION CONTAINED THEREIN, plaintiff's recovery, if any, against this answering defendant must be off-set by all amounts of overpayment of benefits to plaintiff and any interest owed thereon and by any other amounts appropriate for set-off.

FIFTH AFFIRMATIVE DEFENSE

(No Abuse Of Discretion)

AS A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION CONTAINED THEREIN, this responding party alleges that Liberty Life did not abuse its discretion in denying plaintiff's claim for benefits under the Plan.

SIXTH AFFIRMATIVE DEFENSE

(Waiver and Estoppel)

AS A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN AND TO EACH ALLEGED CAUSE OF ACTION CONTAINED THEREIN, this answering defendant alleges that plaintiff has waived and is estopped and barred from alleging the matters set forth in the complaint.

SEVENTH AFFIRMATIVE DEFENSE

(Laches)

AS A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN AND TO EACH ALLEGED CAUSE OF ACTION CONTAINED THEREIN, this answering defendant alleges that plaintiff's complaint is barred by the Doctrine of Laches.

WHEREFORE, this answering defendant prays for judgment as follows:

1. That plaintiff take nothing by his complaint;
2. For costs of suit incurred herein; and
3. For such other and further relief as the Court deems proper.

Dated: August 3, 2007

ROPERS, MAJESKI, KOHN & BENTLEY

By: /s/ Crystal N. Thomas

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